

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMIE RYAN OVERSTREET,

Plaintiff,

v.

M. WHITE, et al.,

Defendants.

No. 2:20-cv-0633 AC P

ORDER

Plaintiff has requested the appointment of counsel. ECF No. 36. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).


“When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.’” Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish

1 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

2 Plaintiff asserts that he requires the appointment of counsel due to his mental health status  
3 and because of the complexity of the case and the need to investigate and cross-examine  
4 witnesses. ECF No. 36. At this stage, the court does not find that the issues are overly complex,  
5 and plaintiff has thus far demonstrated that he is capable of articulating his claims without  
6 assistance. Furthermore, the mere assertion that plaintiff suffers from mental health conditions is  
7 not enough to establish exceptional circumstances warranting appointment of counsel, and to the  
8 extent plaintiff's request is based on the need for assistance at trial, the request is premature  
9 because it has not yet been determined whether this action will proceed to trial. For these  
10 reasons, the motion will be denied. If plaintiff chooses to file another motion for appointment of  
11 counsel, he should identify what conditions he suffers from, explain how his conditions prevent  
12 him from proceeding without assistance, and provide medical documentation supporting his  
13 claimed impairments.

14 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for the appointment of  
15 counsel, ECF No. 36, is DENIED.

16 DATED: January 26, 2022

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18 ALLISON CLAIRE  
19 UNITED STATES MAGISTRATE JUDGE  
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